

REMARKS

The Office is requiring restriction of the above-identified application as follows:

Group I: Claims 1-3, drawn to a skin aging-preventing or improving agent that comprises a plant species;

Group II: Claim 4, drawn to a method of preventing aging of the skin; and

Group III: Claim 5, drawn to a method of screening skin wrinkling.

Applicants have elected Group II, claim 4, with traverse.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples, to support any conclusion in regard to patentable distinctness (M.P.E.P. § 803). Applicants respectfully traverse the restriction requirement on the grounds that the Examiner has not carried the burden of providing sufficient reason and/or examples to support any conclusion that the claims of the restricted groups are patentably distinct.

The Examiner has categorized the relationships between Groups I, II and III as product and process of use. Patentable distinctness may be shown if either or both of the following can be shown: (A) that the process of using the product as claimed can be practiced with another materially different product or (B) that the product as claimed can be used in a materially different process of using that product (M.P.E.P. § 806.05(h)). The Examiner asserts that there are numerous other plant species or pharmaceutical products that reduce the signs of aging.

However, the Examiner's assertion does not meet the requirements under § 806.05(h), because a mere generalization about other plant species or pharmaceutical products is not evidence that the claimed product can be used in a materially different process of using the product. Therefore, the Examiner's reasoning is merely a restatement of the Examiner's

conclusion that the two groups are patentably distinct. As the Examiner has provided insufficient reasons in support of this belief, the Examiner has not met the required burden, and accordingly, the restriction is believed to be improper and should be withdrawn.

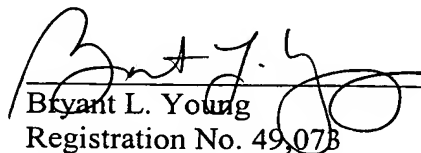
The Examiner has categorized the relationships between Groups II and III as unrelated. Patentable distinctness may be shown if different groups, not disclosed as capable of use together, having different modes of operation, different functions or different effects are independent. (M.P.E.P § 806.04; M.P.E.P § 808.01).

The Examiner, however, simply concludes that the inventions are unrelated because one relates to a method of preventing aging and the other relates to a method of screening skin wrinkling. The Examiner has not provided any evidence to support her position that the categorization of the groups meets the requirements under §§ 806.04 and 808.01. In particular, the Examiner has not shown that the groups have different modes of operation, different functions or different effects. Accordingly, the restriction is improper and should be withdrawn.

Applicant submits this application is now in condition for examination on the merits and early notification of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon


Bryant L. Young
Registration No. 49,078

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413-2220
(OSMMN 06/04)